

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653-KRH
<u>et al.</u> ,	:	
	:	Jointly Administered
Debtors.	:	
-----X	:	

**U.S. 41 & I 285 COMPANY'S OBJECTION TO THE DEBTORS'
PROPOSED CURE AMOUNT RELATING TO THE ASSUMPTION OF
ITS UNEXPIRED NON-RESIDENTIAL REAL PROPERTY LEASE**

U.S. 41 & I 285 Company (the "Landlord"), by its undersigned counsel, hereby submit this objection (the "Cure Objection") to the Debtors' proposed cure amount with respect to the assumption and assignment of that certain unexpired non-residential lease of certain premises located at 2971 Akers Mill Road SE, in Atlanta, GA (the "Akers Lease"). In support of the Cure Objection, the Landlord respectfully state as follows:

1. On or about November 25, 2008, the Debtors filed the *Debtors' Motion for Orders Under 11 U.S.C. §§ 105, 363, and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (II) Setting Sale Hearing Date, and (III) Authorizing and Approving (A) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases, and (C)*

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Counsel for U.S. 41 & I 285 Company

Lease Rejection Procedures, which listed on Exhibit B thereto the Debtors' proposed cure amount for, among others, the Akers Lease.

2. The Landlord objects to the Debtors' proposed cure amount of \$19,477.00 for the Akers Lease. According to the books and records of the Landlord, the amount due and outstanding under the Akers Lease as of November 30, 2008 is \$64,225.66 (the "Landlord's Cure"). A copy of the Aged Delinquencies Report showing such outstanding amount is attached hereto as Exhibit 1.

3. In addition, to the extent that rent, attorneys' fees,¹ or other charges continue to accrue, and/or the Landlord suffers other pecuniary losses with respect to the Akers Lease, the Landlord hereby reserve its right to amend the Landlord's Cure to reflect such additional amounts or to account for reconciliations and adjustments which may not have yet been billed or have not yet become due under the terms of the Akers Lease.

WHEREFORE, the Landlord respectfully requests that the Court enter an order (i) requiring the Debtors to pay the Landlord's Cure, plus any additional amounts or pecuniary losses that hereafter accrue (including reasonable attorneys' fees), in connection with the assumption by the Debtors of the Akers Lease; and (ii) granting such other and further relief as the Court deems just and proper.

¹ The Debtors are required, pursuant to Section 365(b)(1) of the Bankruptcy Code, to cure all outstanding defaults under the Akers Lease prior to assumption thereof. In conjunction with this duty, the Debtors must compensate the Landlord for any actual pecuniary loss, including the payment of attorneys' fees. See 11 U.S.C. §365(b)(1)(B). Attorneys' fees due under the Kimco Leases are compensable. See, e.g., LJC Corp. v. Boyle, 768 F.2d 1489, 1494-6 (D.C. Cir. 1985); Andrew v. KMR Corp., 17 B.R. 438, 439 (Bankr. 9th Cir. 1982); In re BAB Enterprises, Inc., 100 B.R. 982 (Bankr. W.D. Tenn. 1989); In re Westview 74th St. Drug Corp., 59 B.R. 747, 752-4 (Bankr. S.D.N.Y. 1986); In re Ribs of Greenwich Vill., Inc., 57 B.R. 319, 321 (Bankr. S.D.N.Y. 1986).

Dated: December 9, 2008

CHRISTIAN & BARTON, LLP

By: /s/ Jennifer M. McLemore
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-and-

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Counsel for U.S. 41 & I 285 Company

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2008, I caused a copy of the foregoing to be served by electronic means on the "2002" and "Core" lists and through the ECF system.

/s/ Jennifer M. McLemore
Jennifer M. McLemore

EXHIBIT 1

Aged Delinquencies Report

Database: MALL-MRI	Aged Delinquencies	Page: 1						
	Mall Properties	Date: 12/2/2008						
	Date: 11/30/2008	Time: 05:23 PM						
Invoice Date	Category	Source	Amount	Current	30	60	90	120

100-HO00171	CIRCUIT CITY 880	Master Occupant Id: CIRCT100-1	Day Due: 1	Delq Day: 6
	KAREN FIELD	I-1 Current	Last Payment: 11/6/2008	102,049.07
	(804) 527-4000 ext. 2685			

10/10/2008	WTR	WATER/SEWER	CH	32.96	0.00	32.96	0.00	0.00	0.00
10/16/2008	CMY	COMMON AREA CHARGE	NC	-194.34	0.00	-194.34	0.00	0.00	0.00
11/1/2008	CAM	COMMON AREA	CH	3,656.61	3,656.61	0.00	0.00	0.00	0.00
11/1/2008	RNT	MINIMUM RENT	CH	45,508.00	45,508.00	0.00	0.00	0.00	0.00
11/2/2008	CAM	COMMON AREA	CH	11,144.76	11,144.76	0.00	0.00	0.00	0.00
11/2/2008	CMY	COMMON AREA CHARGE	CH	12,157.91	12,157.91	0.00	0.00	0.00	0.00
11/6/2008	REY	R/E TAX CHARGE	CR	-8,117.39	-8,117.39	0.00	0.00	0.00	0.00
11/11/2008	WTR	WATER/SEWER	CH	37.15	37.15	0.00	0.00	0.00	0.00

CAM	COMMON AREA	14,801.37	14,801.37	0.00	0.00	0.00	0.00
CMY	COMMON AREA CHARGE	11,963.57	12,157.91	-194.34	0.00	0.00	0.00
REY	R/E TAX CHARGE	-8,117.39	-8,117.39	0.00	0.00	0.00	0.00
RNT	MINIMUM RENT	45,508.00	45,508.00	0.00	0.00	0.00	0.00
WTR	WATER/SEWER	70.11	37.15	32.96	0.00	0.00	0.00

CIRCUIT CITY 880 Total: 64,225.66 64,387.04 -161.38 0.00 0.00 0.00

CAM	COMMON AREA	14,801.37	14,801.37	0.00	0.00	0.00	0.00
CMY	COMMON AREA CHARGE	11,963.57	12,157.91	-194.34	0.00	0.00	0.00
REY	R/E TAX CHARGE	-8,117.39	-8,117.39	0.00	0.00	0.00	0.00
RNT	MINIMUM RENT	45,508.00	45,508.00	0.00	0.00	0.00	0.00
WTR	WATER/SEWER	70.11	37.15	32.96	0.00	0.00	0.00

Grand Total: 64,225.66 64,387.04 -161.38 0.00 0.00 0.00